

TEXAS
EDUCATION
AGENCY

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EC 23

Opinion Committee

December 20, 1994

The Honorable Dan Morales
Attorney General of Texas
P.O. Box 12548
Supreme Court Building
Austin, Texas 78711-2548

SJS
file # ML-31020-94
JD# 31020

RQ-781

Re: Request for opinion

Dear General Morales:

The Texas Education Agency (TEA) receives numerous inquiries from school districts regarding the use of vehicles which do not meet federal or state school bus safety standards for the transportation of students to and from school or school activities, including vans and passenger cars. There probably are some school districts that use such vehicles for daily transportation routes, but more common uses include transportation for extracurricular activities, transportation of special education students for related services or assessment, or transportation in emergency health situations. Often the vehicle is owned or rented by the school district, but sometimes districts require employees to use their personal vehicles for the transportation of students in special circumstances. Additionally, parents or other volunteers sometimes transport students to extracurricular activities in their personal vehicles. Many administrators and school district attorneys are concerned about their districts' potential exposure to increased civil or criminal liability due to the use of such vehicles and school employees are concerned about their own potential liability when using their personal vehicles to transport students. Therefore, I am seeking your opinion with respect to several legal issues related to the use of such vehicles.

The relevant statutory provisions include:

Federal Provisions Relating to Sale

Federal law authorizes the Secretary of Transportation to publish safety standards applicable to school buses (15 U.S.C.A. 1392(i)). The standards are applicable to any passenger motor vehicle that is designed to carry more than 10 passengers in addition to the driver and that is significantly used for the purpose of transporting primary, preprimary, or secondary school students to or from schools or school-related events (15 U.S.C.A. 1391(14)). The law prohibits the first sale of any such vehicle that does not meet the safety standards (15 U.S.C.A. 1397), but does not appear to regulate the use of such a vehicle after sale.

State Provisions Relating to Purchase

State law requires school districts to purchase through the General Services Commission all motor vehicles used for transporting school children, excluding passenger cars (Section 21.161, Education Code). "Passenger car" is undefined for the purposes of Section 21.161, but is defined as a motor vehicle designed to carry ten passengers or less by Section 2, Article 6701d, Revised Statutes. The law excludes from this requirement vehicles purchased due to an emergency (Section 21.162, Education Code), purchased with certain funds (Section 21.164, Education Code) or acquired by lease or lease-purchase (Section 21.182, Education Code).

State Provisions Relating to Equipment

The Uniform Act Regulating Traffic on Highways requires school buses to have certain equipment for the purpose of enhancing the safety of the students being transported. For the purpose of these requirements, "school bus" is defined as any vehicle that 1) complies with color and identification requirements established by the National Commission on Safety Education of the National Education Association and 2) is used to transport children to or from school or school activities (Section 2, Article 6701d, Revised Statutes). Such vehicles are required to have convex mirrors allowing a view of the area immediately in front of the vehicle (Sec. 105(c), Article 6701d), a fire extinguisher (Sec. 107, Article 6701d), and certain signal lamps (Sec. 124(b), Article 6701d). It is unclear exactly what vehicles are required to have this equipment because the commission referred to in the definition of "school bus" has not been in existence for some period of time and the requirements established by it are unknown.

Driver's License Requirements

The statutory provisions regarding the issuance of a driver's license include special restrictions on the driver of a "motor vehicle while in use as a school bus" (Section 5, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes)). The restrictions include that the driver must be at least 18 years of age, must undergo an annual physical examination, must have a pre-employment driving record check, and must complete a driver training course in school bus safety education. "Motor vehicle" and "school bus" are not defined, however, Section 1 of the act provides that words and phrases that are not defined in that act but are defined in the Uniform Act Regulating Traffic on Highways (Article 6701d) have the meaning assigned in the Uniform Act.

Identification Requirement

All vehicles used to transport students to and from school must be marked "school bus" in letters at least eight inches high on the front, back, and each side (Sec. 4.18, Education Code). The failure to so identify a vehicle is a misdemeanor. The responsibility to display the signs is that of "the operator" of the school bus, which is the bus driver according to A.G. Op. M-529 (1969).

Related Questions of Law


- May a school district purchase, lease, rent, or use for the transportation of students to and from school or school activities a motor vehicle that does not meet federal school bus safety standards promulgated under 15 U.S.C.A. 1392(i), regardless of the vehicle's rated seating capacity, the actual number of students being transported, or the purpose of the transportation service (daily route versus special purpose transportation).
- May a school district purchase, lease, rent, or use for the transportation of students to and from school or school activities a motor vehicle that does not meet state school bus safety standards under Article 6701d, Revised Statutes, regardless of the vehicle's rated seating capacity, the actual number of students being transported, or the purpose of the transportation service?
- If a school district may transport students to and from school or school activities in a motor vehicle that does not meet federal or state school bus safety standards, must the driver satisfy the requirements for a driver of a "motor vehicle while in use as a school bus" under Section 5, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), regardless of the vehicle's rated seating capacity, the actual number of students being transported, or the purpose of the transportation service?
- If a school district may transport students in a vehicle that does not meet federal or state school bus safety standards, must the vehicle be identified as a school bus in compliance with Section 4.18, Education Code, regardless of the vehicle's rated seating capacity, the actual number of students being transported, or the purpose of the transportation service? Is the driver subject to a criminal penalty for

the failure to comply with Section 4.18, Education Code? Are any other school district employees or officers subject to a criminal penalty for the failure to comply with Section 4.18, Education Code?

- May a school district require or allow students to be transported in the personal vehicles of school district employees or other persons? If so, do any of the above federal or state requirements apply to those vehicles or the drivers of those vehicles, regardless of the vehicle's rated seating capacity, the actual number of students being transported, or the purpose of the transportation service?

Your attention to these questions is greatly appreciated. If you have any questions, please contact David Anderson, Chief Counsel, at 463-9720.

Sincerely,


Lionel R. Meno
Commissioner of Education